

## **SPECIAL CONDITIONS OF TENDER** (Regulations)

**COMUNE DI TREVIGLIO (BG)**

**Via dei Mulini n. 10/20 and via F. Filzi n. 11/13**

**Building envelope and systems extraordinary maintenance  
for energy saving**

**CLIENT:** ALER di Bergamo-Lecco-Sondrio

**February 2016**

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## **FIRST PART**

### **TECHNICAL AND FINANCIAL DEFINITION OF WORKS**

#### **CAPO I - SUBJECT AND NATURE OF THE TENDER**

##### **Art.1 - Tender Subject**

The extraordinary maintenance project of the buildings owned by ALER and located in Treviglio (BG) in via Dei Mulini (n° 10-12-14-16-18-20, n. 54 housing units) and in via F. Filzi (n° 11 – 13 – 15, n. 54 housing units) has the aim of limiting the energy consumption of space heating, of improving the hygrothermal comfort and of reducing the maintenance cost, by means of intervention on building envelope and systems. Its basic quality and performance level is declared in this Special Conditions of Tender and in all design documents, which, together with all attachments, are recognized as entirely and perfectly known by the contractor.

##### **Art.2 - Tender procedure**

Works referred to in this Special Conditions are tendered by fixed price based on the most economically advantageous offer criterion, in accordance with the provisions of art. 83 in D.Lgs. 163/2006.

##### **Art.3 - Tender amount**

The total starting amount of the tender (V.A.T. excluded), is equal to **€ 1.243.240,17=** split in:

- a) **€ 1.189.363,09** for the execution of fixed price necessary works subjected to reverse auction;
- b) **€ 53.877,08** for the safety plan implementation, which is not subject to reverse auction.

The downward price offered by the contractor is also implicitly extended to the attached prices list; the latter shall be only used in case of in-process variances.

##### **Art.4 - Works excluded from the tender**

The works listed below, which could be assigned to different companies by the Contracting Authority, are excluded from the tender in unappealable way and the contractor cannot request for dispensation and special compensation:

- a) Contribution for connection to public utilities;

##### **Art.5 - Primary category, category of unbundled and subcontracted works**

In accordance with art. 61 of *Regolamento Generale sui lavori pubblici* (General Regulations on Public Works) approved by D.P.R. 05.10.2010 n.207 and complying with annex "A" included in the regulation above, works are classified as primary category of general works "OG1".

In accordance with art. 118 D.Lgs. 163/2006 and with art. 107, 108 e 109 of *Regolamento generale*, work phases belonging to categories different from primary one, together with respective amounts, are indicated in the table below. Such work phases, can be unbundled and, at discretion of the contractor, subcontracted, in accordance with law conditions, the current Special

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Conditions, restrictions and prescription as below.

	Works	Category ex all. A DPR n.207/2010		amount in €
1	General works	Primary	OG1	492.934,76
2	General works finishing in wood, plastic, metal and glass	Unbundled /subcontracted	OS6	471.258,60
3	Heating and conditioning facilities	Unbundled /subcontracted	OS28	273.259,95
4	Electrical facility, phone lines., etc.	Unbundled	OS30	5.786,86
<b>TOT. WORKS AMOUNTS (including safety charges)</b>				<b>1.243.240,17</b>

In accordance with art.118 c.2 del *Codice* (Code), works belonging to the category OG1 can be subcontracted up to 30%.

The works belonging to specialised categories, listed in art.12 L. 80/2014 and different from the Primary one, for which a “mandatory qualification” is prescribed, and corresponding to an amount higher than **€ 150.000**, have to be realized by the contractor only if they are equipped by corresponding category qualification requirements; otherwise, if the contractor is a temporary vertically-shaped association, it must be done by a principal company, in other words by a subcontractor company if they have been previously indicated as possible subcontractors in the offer; in any case the company who realizes the intervention must be endowed with necessary requirements; in the absence of the latter for one of these categories, **the contractor has to indicate in the submission to the tender their works as subcontract, otherwise it shall be subject to exclusion from the tender.** The works belonging to the specialized categories as declared in previous clause, for which art.12 does not prescribe a “mandatory qualification” of an amount higher than € 150.000, can be realized by the contractor even if the latter is devoid of the qualification requirements for the corresponding category; furthermore, by discretion of the contractor, they can be unbundled or subcontracted if previously indicated as subcontracting in the offer. Above-mentioned works, together with corresponding amounts, are listed in the table above.

The works for which there is the obligation to execute them by installer, respondent to D.M. 22.01.2008 n.37 requirements, even if the amount is lower than **€ 150.000**, can be realized by the contractor only if they have above-mentioned requirements; if not and if the contractor is A.T.I. vertically-shaped, they shall be realized by a principal company, in other words by a subcontractor company; anyway the executor of works must have the requirements. In any case the above-mentioned works **must be indicated as adequate for the subcontract in the tender submission, otherwise they shall be excluded from the tender.** The above-mentioned works, together with corresponding amounts, are identified by numbers 3 e 4 of the table above.

Except as specified in the previous clause, the works belonging to general or specialized categories listed in art.12 of Law 80/2014, not included in primary category, for amounts not exceeding € 150.000, may also be performed by the contractor if he has not the qualification requirements for the corresponding category; furthermore, by discretion of the contractor, they can be unbundled in order to be realized by a principal company, that is a subcontractor, if previously

indicated as subcontracting in the offer; in the latter subcontractor must have all the requirements mentioned in art. 90 del D.P.R. n. 207/2010.

#### **Art.6 - Homogeneous groups of works, accounting categories**

The homogeneous groups of works declared in art. 132, clause 3, of D.Lgs 163/2006, in art. 43, clauses 6, 7 and 8 of General Tender Specifications Regulations are indicated in art. 16 (payments) of the current Special Conditions.

#### **Art.7 - Conformity with laws, rules, specifications**

To everything that is not in opposition with the conditions of this Conditions and its annexes, the execution of the contracted works is subject to compliance with:

- D.Lgs 12.04.2006 n. 163, s.m.i.;
- D.P.R. 05.10.2010 n. 207 – Regulation of execution and implementation of D.Lgs 12.04.2006 n.163 s.m.i.;
- General Tender Conditions for works under the responsibility of Ministero dei Lavori Pubblici approved by D.M. 19 April 2000 n. 145, referring to not abrogated section;
- Building Code of Comune di Treviglio, local urban planning regulation in force, local hygiene rules, Fire Protection regulation in force;
- D.Lgs 276/2003 e s.m.i.
- D. Lgs n. 81 del 09 April 2008

### **CAPO II - TENDER CONTENTS**

#### **Art.8 - Documents belonging to the tender**

Besides the current Special Conditions, the following list belongs to the tender:

- a)** General Conditions declared in art. 7;
- b)** architectural design;
- c)** mechanical system design;
- d)** electrical system design;
- e)** unit price list attached to documentation of tender;
- f)** safety plan and coordination;
- g)** safe operational plan;
- h)** timetable of works;

The signing of the contract and its annexes, by the contractor is tantamount to a declaration of perfect knowledge of the Law, the Regulations, and all applicable rules on public works and unconditional acceptance.

In particular, when the contract is signed, the contractor shall specifically accept by a written document, as declared art.1341 and 1342 of the rule of C.C., all contractual conditions included in current Special Conditions and in the above-mentioned laws and rules prescriptions.

**In case of differences between the various project documents will be deemed valid the most favourable solution for the Contracting Authority.**

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### **Art.9 - Representative of the contractor and administrative address**

The contractor must declare the administrative address as required in art. 2 included in General Conditions of Tender; at this administrative address all orders, the assignment of deadlines and any other notification or contract dependent communications will be ever performed.

Furthermore, the contractor must communicate, in accordance with art. 3 of General Conditions of Tender, personal data about people responsible for collection.

Each change to the administrative address as mentioned in art 1, or to people authorised as mentioned in clause 2, shall be immediately reported to the Contracting Authority.

### **Art.10 - General regulations about materials, components, systems and implementation**

The execution of all processes, works, supplies, components, also relatively to systems and subsystems of technological facilities, must be complied with legal requirements and regulations concerning quality, origin and acceptance of materials and components.

The acceptance, the quality and the use of the materials, their supply, the place of their origin and the possible replacement of the latter, are declared in articles 157 D.P.R. 207/2010, and art. 16 and 17 of General Tender Specifications.

## **CAPO III - TERMS OF CONTRACT**

### **Art.11 - Delivery of the works**

The works of the contract shall be delivered after the signing of the contract.

If the day set and notified the contractor does not attend to receive the delivery of the work, the D.L. sets a new final deadline, not less than 5 days and not more than 15; the terms for the execution shall commence any case from the date of first call. Once the deadline is not usefully passed, the Contracting Authority has the faculty to terminate the contract and confiscate the deposit, notwithstanding the possibility to make use of the guarantee for the purpose of damages, without this constitutes grounds for a claim or any exception. If a new call for tenders will be declared, the contractor shall be excluded from participation. The contractor must submit to the Contracting Authority, before works starting, documentation about declaration of commencement of works by social security institutions, insurance and accident prevention institutions, including in case the Building Fund. Issuance of each S.A.L. (stage reached in the work) the Contracting Authority will proceed with the request of the D.U.R.C. (single document of regular contributions) for both the contractor and any subcontractors.

### **Art.12 - Time for the completion of works – penalty for delays**

The time to complete and enhance the whole works included in the contract is set at 270 consecutive calendar days (two hundred and seventy) starting from the date of the record of delivery of works.

The penalty for the delay in art. 145 c.3 D.P.R. 207/2010, except for the right of the Contracting Authority to receive compensation cause of greater damages, is fixed at 0.03 per cent (zero point zero three percent) of the contractual amount of works, for each one more day delay .

In addition the contractor must refund the expenses for direction, support and surveillance as long as it took for the execution, in the amount of 10 percent of the above-mentioned penalty. In accordance with the above-mentioned art.145 c.3, if delays are such as to result in a penalty of amount exceeding 10% of the contractual net amount, art. 136 del D.Lgs. 163/2006, relating to termination of the contract, shall be implemented.

In order to justify delays in completion of works the contractor shall never attribute the

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responsibility, in whole or in part, to other companies or enterprises which, on behalf of the Contracting Authority implement other works or supplies, if the contractor has not reported promptly and in written documents to the Contracting Authority the delay due to such companies, so that the Contracting Authority itself may keep regular contestation.

### **Art.13 - Suspensions and extending**

If cause of “force majeure”, weathering or other special circumstances prevent temporarily the best practice smooth running of the works, D.L. , ex officio or by the contractor's reporting, may order the suspension of work, drawing up a report. These are special circumstances of situations that determine the need to proceed with the establishment of a variation during the works in the cases provided in art. 132 clause 1, letter a), b) e c) e d) of D.Lgs 163/2006.

Referring to art. 158, 159 e 160 of *Regolamento Generale* (General Regulations).

The contractor, if for reasons not attributable to it, is not able to complete the work within the time allowed, it can ask by justified request , extensions which, if recognized as reasonable, shall be accepted by the D.L. , but only if the applications are received before the expiry of the above-mentioned deadline.

### **Art.14 - Working Plan of the contractor's work and timetable**

Before starting work, the contractor shall prepare and deliver to the D.L. own working plan of the works, based on its technology, its own business decisions and their professional organization; this program shall include for each processing, forecasts about the period of execution and the amount alleged partial and gradual, the progress of work at contractually fixed dates for the liquidation of payment certificates, must be consistent with the contractual completion deadline and it must be approved by the D.L., by affixing a visa within five days from receipt. After the above-mentioned period without any act by the D.L., the executive program of the work is deemed to be accepted, excluding obvious lack of logic or erroneous information incompatible with completion deadline.

The executive program of the contractor's work may be amended or supplemented by the Contracting Authority, through administrative orders, as often as necessary for achieving a better efficiency in the execution of the work.

The works are still performed in accordance with the timetable drawn up by the Contracting Authority and included in the working plan; this program may be modified by the Contracting Authority if it is necessary for the efficiency improvement in execution of the work.

### **Art.15 - Non-derogation of execution deadline**

Points listed below do not represent reasons for postponing the commencement of the works, their lack of a regular or continuous run forecasted by the plan or their delayed completion:

- the fulfilment of requirements, or remedies to incidents or penalties imposed by the D.L. or by the supervisory authorities in health and safety, including the safety coordinator during the working phase;
- the supplementary investigations that the contractor considers as necessary to perform foundations works, structures and systems, unless they are ordered by the D.L. or expressly approved by this;
- the time required for the execution of tests on the samples, surveys, analysis and other similar tests;
- the time required for the execution of procedures in charge by the contractor and in any case still declared by Special Conditions of Tender;

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- Any disputes between the contractor and suppliers, subcontractors, and other subjects in charge;
- the potential disputes within the company between the contractor and its employees.

## **CAPO IV - FINANCIAL CONTENTS**

### **Art.16 - Payments**

In accordance with art.26-ter of the Law n.98 del 09.08.2013 e art. 8 c. 3bis of the Law n.11 del 27.02.2015, the advance payment equal to 20% of the contract amount is granted to the contractor.

The advance payment shall be paid within fifteen days from the date of actual start of works.

The disbursement of the advance payment is subject to the bank or insurance surety guarantee and the amount is equal to the advance itself plus the statutory interest rate applied to the time necessary to recover the same advance payment.

The contractor shall be entitled to payment on deposit every two months from the date of the start of works.

For determining the amount of each instalment of the advance it shall referred to the following incidence rates on the lump sum total amount for the execution of the works (art. 3 letter a), valid only for granting the deposits:

#### **LUMP SUM WORKS**

Percentage and category of works

#### **Treviglio Via Filzi**

n° ord.	Description	% c.s.a.
1	ETICS for Reinforced Concrete sections + coating + downspouts	29,91
2	Attic roof insulation	4,35
3	Doors and windows replacement	43,39
4	Heat accounting and related works	18,97
5	Specific safety costs	3,31
6	Attestation of conformity for heat metering system	0,05
7	Verification of completion of all works of the lump-sum contract	0,02

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<b>Total € 578.320,68.= (including safety charges)</b>	<b>100,00</b>
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#### **Treviglio Via dei Mulini**

1	ETICS for Reinforced Concrete sections + coating	17,32
2	Attic roof insulation	8,10
3	Doors and windows replacement	41,94
4	Heat accounting and related works	14,23
5	Renovation of heating plant	14,14
6	Replacement of flue in heating plant	1,61
7	Electrical system of heating plant	1,00

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8	Specific safety costs	1,44
9	Attestation of conformity for heat accounting	0,05
10	Attestation of conformity for heating system	0,05
11	Attestation of conformity for gas fuelled system	0,05
12	Attestation of conformity electrical system	0,05
13	Verification completion of all works of the lump sum contract	0,02

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Total € 664.919,49.= (including safety charges)		100,00
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**To guarantee compliance with the standards and requirements of collective agreements, laws and regulations on the protection, security, insurance, assistance and physical safety of workers, it has made a deduction of 0.5% on progressive net amount of work to be released, without impediments, at the liquidation of the final bill, after the approval of provisional acceptance.**

#### **Art.17 - Payment of balance**

The final account of the work shall be drawn up within 30 days of their completion proven by appropriate certificate; if the D.L. has made use of the option provided for by clause 2 art. 199 of D.P.R. 05.10.2010 n. 207, 30 days shall run from the expiry of the deadline given to the company for the completion of work.

Drafted the certificate of completion, it is ascertained and prepared the final instalment of the balance for whatever the amount of the sum.

The final account of the work is signed by the contractor and the Contracting Authority, by the D.L. within 30 days of its rafting in accordance with clause 1.

The instalment of the balance, together with taxes declared in art. 16, without impediments, is paid within 90 days after the issuance of the provisional acceptance certificate or the certificate of regular execution.

The payment of the instalment of the balance, subject to provisions of surety in accordance with art. 141, clause 9, of D.Lgs. 163/2006, does not represent acceptance of the work as declared in art. 1666, second clause of C.C. (*Codice Civile*).

The surety guarantee referred to in the previous clause shall have to be valid and effective not less than 26 (twenty-six) months from the date of issue of the acceptance certificate and it may be exercised, at the choice of the contractor by adjustment of the guaranteed amount or other extension with the same legal effects of the guarantee already established under the definitive deposit upon signing the contract.

Excluding what is declared in art. 1669 of CC (*Codice Civile*), the contractor is liable for the irregularities and vices of the work, although recognizable as long as denounced by the contracting subject before the final acceptance certificate or certificate of regular execution.

#### **Art.18 - Prices revision**

Prices are fixed and invariable. In accordance with art. 133 clause 2 of D.Lgs 163/2006 proceeding to the revision of prices, clause 1 art. 1664 *Codice Civile* is not effective, is not allowed excluding what is declared in clause 4 and subsequent clauses in the same article.

If, for reasons not attributable to the contractor, the execution period is prolonged to more than



two years since their beginning, the contract is governed by the fixed price, consisting of the price of the work minus the downward auction, plus a percentage, determined by ministerial decree, to be applied, if the difference between the real rate of inflation and the inflation rate in the previous year is higher than the 2 percent, to the amount of works still to be performed for each full year expected for the completion of the works.

#### **Art.19 - Grant of the contract and grant of loans**

The grant of the contract in any form is forbidden; any opposite agreement is automatically void.

The assignment of loans under the provisions of art. 117 of Legislative Decree 163/2006 and the Law 21 February 1991, n. 52, is allowed only if release is a Bank or a financial intermediary enrolled to *Albo* at Banca d'Italia and the transfer agreement, the original or a certified copy thereof, is transmitted to the Contracting Authority prior to or simultaneously to the payment certificate signed by the R.P., *Responsabile del Procedimento* ( Sole Project Manager).

### **CAPO V - DEPOSITS AND GUARANTEES**

#### **Art.20 - Provisional deposit**

Under the declaration of art. 75 of Legislative Decree 163/2006 a provisional deposit is required and set at 2% of the amount of works auction based, to be provided by a bank or insurance guarantee and showing the commitment of the guarantor to release the guarantee as referred to next Article 21, if the competitor is awarded the tender. The deposit covers the lack of signature of the contract by the contractor and it is automatically released at the signing of the contract. The security deposit is refunded within 30 days after the awarded to not awarded contractors. The bank guarantee or insurance policy on the provisional guarantee must be valid for at least 180 days from the date of the offer submission and must expressly provide for waiver of the right to enforce precautionary payment by the principal debtor and its capability within 15 days by written request of the Contracting Authority. The amount of the guarantee is reduced by 50% for competitors who meet the requirements set out in clause 7 of the above mentioned art.75.

#### **Art.21 - Final deposit**

In accordance with art. 113 D.Lgs 163/2006, the Contractor is required to submit an original, before the formal signing of the contract, a bank guarantee equivalent to 10% of net contract amount. If awarded with downside of more than 10% auction, the bank guarantee has increased many percentage points as those exceeding 10%; where the drop is more than 20% the increase is two percentage points for each point of greater discount to 20%. The final deposit is gradually released based on the execution progress, up to a maximum of 80% of the initial guaranteed amount. The release, under the terms and for the aforementioned amounts, is automatic with no need for the client approval, with the only condition of prior delivery to guarantor institution, by the contractor or transferee, of the progress of works, or an equivalent document, in original or certified copy, certifying the achievement of the above-mentioned percentages of work performed. The residual amount, equal al'20% of the initial guaranteed amount, to be released in accordance with current legislation.

It may be constituted by a bank guarantee furnished by an approved financial institution or by an insurance policy issued by insurance company regularly authorized; it can also be paid in European currency cash or negotiable debt securities or guaranteed by the Italian State, and assessed in the course of the day of deposit to the Treasury of the Contracting Authority.

In cases where is paid by means of surety policy or bank guarantee, this must expressly provide for waiver of the right to enforce precautionary payment by the principal debtor and its capability within 15 days by a written request from the Contracting Authority.

The failure to establish the guarantee determines the reliance revocation and the acquisition of provisional deposit by the Contracting Authority, which will award the contract to the competitor following in the list.

The Contracting Authority may claim the final deposit, partially or totally, to guarantee the fulfilment of all obligations of the contract and compensation for damage resulting from failure to perform or inadequate performance of the obligations, as well as the cases declared in art. 123 clauses 2 e 3 of General Regulation.

The final deposit should remain until the date of issue of the provisional acceptance certificate or the certificate of regular execution, or otherwise expiry of twelve months from the date of completion of works resulting from the corresponding certificate.

The surety is promptly reinstated if, during the execution, it has been accepted, partly or wholly, by the Contracting Authority; in case of noncompliance the reintegration is made basing on the price accrued expenses payable to the Contractor.

#### **Art.22 - Guarantee reduction**

The final guarantee will be reduced by 50% for competitors who meet the requirements in accordance with art.75 c.7 del D.Lgs. 163/2006.

In case of temporary association of competitors, reductions, referred to in this Article, shall be granted where its qualifications or above-mentioned statements are proven by the leader Company group and possibly from a number of companies principals, if the sum of the technical and organizational requirements is at least equal to that required for the qualification of a single company.

#### **Art.23 - Insurance policies**

Taking out an insurance policy "CAR Construction All Risks" is a contractor's obligation, as declared in the conditions of the "Annex A of Part I" in which are also shown the amounts of and the duration thereof. The policy and the related costs are in charge of the contractor.

### **CAPO VI - INSTRUCTIONS FOR THE EXECUTION**

#### **Art.24 - Variation of comprehensive sum lump works**

Only the variants to the executive project prepared by the Contracting Authority from the offering advanced by the contractor during the tender are allowed.

### **CAPO VII - INSTRUCTIONS FOR SAFETY PLAN**

#### **Art.25 - General Rules for safety**

The contracted works must be conducted in full compliance with all applicable rules on accident prevention and hygiene and in any case in condition of permanent safety and hygiene.

As regards the management of the working site, the contractor is also obliged to strictly observe the provisions of the current Hygiene Regulations.

The Contractor shall prepare, in time and in accordance with current provisions, the special plans for noise reduction related to staff and equipment used.

The contractor cannot begin or continue work if the application of the provisions of this Article is not accomplished.

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## **Art.26 - Safety and health at work**

The contractor is obliged to provide to the Contracting Authority, within 30 days from the award, an indication of the collective agreements applied to employees and a statement on compliance with the insurance and social security obligations under the laws and agreements in force.

The contractor is obliged to observe the general protection measures introduced by Legislative Decree n. 81 of 9 April 2008 and the provisions of the decree applicable to works in working site.

## **Art.27 - Safety plans**

The contractor is obliged to observe strictly and without reservation or exception the safety and coordination plan prepared by the coordinator for safety and made available by the Contracting Authority, in accordance with D.Lgs. n. 81 of 9 April 2008.

The contractor may submit to the Safety Coordinator during the works one or more reasoned proposals for modifications or additions to the coordinating security plan, in the following cases:

a) to adapt the content to their own technologies or when believes it can better ensure the safety on the construction site on the basis of their own experience, even after the mandatory consultation and preventive of the representatives for the safety of their workers or to comments by the supervisory bodies;

b) to ensure compliance with the regulations for prevention of accidents and the protection of workers' health eventually lacking in the plan, including the following qualifications or requirements of the supervisory bodies.

The contractor has the right to obtain the timely decision of the Safety Coordinator during the works, by an act motivated to report in the documentation of the construction site, on acceptance or rejection of the proposals submitted; the coordinator's decisions are binding on the contractor.

When the coordinator does not act within the three working days after submission of the contractor proposals, in the cases referred to in subparagraph a), the proposals are considered accepted.

When the coordinator has not acted within three working days after submission of the contractor's proposals, which may be extended just once for an additional three working days in the cases referred to in subparagraph b), proposals are considered rejected.

In the cases referred to on a reported letter a), the eventual acceptance of amendments and additions cannot justify changes or adjustments of the agreed prices or surcharges of any kind of remuneration.

In the cases referred to on a reported letter b), if the eventual acceptance of amendments and supplements include increased to Company's charges, and that fact is duly proven and documented, the regulations concerning the variants shall be applied.

## **Art.28 - Operational safety plan**

The Contractor, within 30 days from the award and before the commencement of work, shall prepare and deliver to the D.L. or, if appointed, the security coordinator in the execution phase, an operational security plan in respect to their own choices and responsibilities in the organization of the site and the execution of work. The operational safety plan includes the risk assessment document referred to in Article 28 of Legislative Decree. N. 81 of April 9, 2008, with reference to the specific construction site and must be updated with each forecast change of work.

The operational safety plan is detailed complementary plan to the safety and coordination plan, as declared in art.91, paragraph 1, lett. a) and art. 100 of Legislative Decree N 81/2008.

## Art.29 - Compliance and implementation of safety plans

The contractor is obliged to observe the general protection measures in art. 15 of Legislative Decree. N. 81/2008, with particular regard to the circumstances and the duties described in articles. 95 and 96 of Legislative Decree. N. 81/2008.

The security plans must be prepared in accordance with EU directives 89/391 / EEC and 92/57 / EEC, the corresponding national implementing legislation and regulations and relevant best technical handbooks.

The General contractor is obliged to promptly communicate before the commencement of works beginning and periodically during the execution by client or the coordinator request, the unrollement to *Camera di Commercio, Industria Artigianato e Agricoltura* (Chamber of Commerce and Industry), and indicate the collective agreements applied to employees and the statement about the performance of insurance and social security obligations. The awarded company is required coordinate all the companies operating in the construction site, in order to make specific plans drawn up by the sub-contractors mutually compatible and consistent with the plan submitted by the contractor. In case of Temporary Association of Companies or consortium that obligation is incumbent to the company principal. The technical construction site manager is responsible for compliance of the plan by all the Companies engaged in the execution of works.

The safety and coordination plan / replacement and the operational safety plan form an integral part of the contract. Severe or repeated violations of the plans themselves by the contractor, in any case attested and for which a formal notice has been previously issued , represent the termination of the contract.

## **CAPO VIII - SUBCONTRACTING REGULATIONS**

### Art.30 - Subcontracting and piecework

According to Article 118 of Legislative Decree 163/2006, the award in subcontracting of work included in the primary category shall be allowed to the extent not exceeding 30% of the amount of the same category.

The grant of subcontracting is authorized under the following conditions:

1) the competitors, at the time of the offer, or subcontract awarded companies, in case of variation during execution, at the time of the awarding, have already indicated the works or phases of works that intend to be sub-contracted or granted as piecework; the omission of the indications means that the use of subcontracting or piece work is forbidden and cannot be authorized;

2) the contractor shall deliver certified copy of the subcontract to the Contracting Authority at least 20 days before the date of actual start of the execution of subcontracted work. The contractor assumes responsibility for the delivering also the statement about the existence or not of any form of control or connection, in accordance with art. 2359 of the Civil Code, with the company which is entrusted with the subcontracting or piecework; in case of a temporary association, company or consortium of companies, similar declaration must be made by each of the participating companies to association, company or consortium;

3) the contractor, together with the delivering of the subcontract to the Contracting Authority, in accordance with point 2, transmits to the same Contracting Authority, the documentation attesting that the subcontractor has the requirements prescribed by law for participation in competitions of LL.PP., containing data of category and amount of work to be done in subcontracting or piecework;

4) No prohibition exists in respect of the subcontractor, in accordance with article 10 of the L.575 / 65, as subsequently amended and supplemented articles; for this purpose, where the amount of the subcontract exceeds € 150,000.00, the contractor must deliver to the Contracting Authority the

necessary documentation for the obligations established by legislation of the mafia prevention and against organized crime, in relation to subcontractors and piecework companies, according to the procedures set out in Legislative Decree no. 159/2011;

5) subcontracting and granting as piecework must be authorized in advance by the Contracting Authority upon written request of the contractor; the authorization is issued within 30 days of receipt of the request; this period may be extended just once for not more than 30 days, if justified reasons are met; after such period, or any extension thereof, if the Contracting Authority has not acted, authorization is deemed to be granted if the legal conditions for the award of subcontracts are met;

The award of sub-contracts or piecework has the following obligations:

6) for the works subcontracted to subcontractors, the contractor has to refer to the prices resulting from the award lowered by no more than 20 percent;

7) the names of all subcontractors must be reported in the information plaques outside of the construction site, together with indication of the category of the works subcontracted and the amount of the works;

8) Subcontractors must fully observe the compensation and conditions established by national and territorial collective agreements in force for the sector and for the area in which the work are executed and they are responsible, jointly and severally with the contractor, to the observance of the aforesaid rules toward their employees for services performed in the field of subcontracting;

9) Subcontractors by means of the contractor, must transmitted to the Contracting Authority, before work, documentation of declaration of social security funds, including the Building Fund, insurance and accident prevention.

These provisions shall be applied also to temporary association and consortium companies even when the associated companies or consortium does not intend to directly carry out the unbundled works.

For the purpose of this article, any contract relating to activities carried out anywhere that requires the use of labour, such as supplies with installation and operated equipment rental is considered as subcontracting. Furthermore these contracts are considered as subcontracting if each amount exceeds more than 2 percent of the amount of awarded works or if the amount exceeds of € 100,000 and if the incidence of labour costs and staff is more than 50 percent of the amount of the subcontract,.

The work subcontracted cannot be further sub-contracting and therefore the subcontractor may not subcontract in turn the works. Supplies with installation of systems and special structures identified in the Regulation are exceptions to the prohibition; in such cases the supplier or subcontractor for the installation or assembly, can make use of its trust companies for which there is not any of the prohibitions referred to in clause 4. The contractor shall inform the Contracting Authority, for all sub-contracts, the name of the sub-contractor, the amount of the sub-contract, the object of the work, service or supply awarded.

### **Art.31 - Subcontracting responsibilities**

The contractor shall nevertheless be liable to the Contracting Authority for the execution of the subcontracted works, raising the Contracting Authority itself from any claims of subcontractors or claims for compensation by third parties for consequences due to execution of the subcontracted works.

The D.L. and the responsible for the procedure, as well as the coordinator in the field of security during the execution of the work, in accordance with art. 92 of Legislative Decree. N. 81/2008, shall verify, respectively for their competence, the compliance with all the eligibility conditions of the subcontract.

Unauthorized subcontracting involves penalties according to art. 21 of Law no. 646/82 as

amended by Law 28.06.1995, n. 246.

### **Art.32 - Subcontractors payment**

The Contracting Authority has not to paid directly subcontractors and piecework workers and the contractor must transmit to the same Contracting Authority, within 20 days from the date of each payment made in its favour, a copy of the receipted invoices for payments paid by itself to sub-contractors or piecework workers, with details of any security interest deductions.

## **CAPO IX - DISPUTES, LABOUR, ENFORCEMENT EX OFFICIO**

### **Art.33 - Disputes**

When disputes arise between the D.L. and the contractor, they are be solved by administrative channels in accordance with the Regulation of Implementation of the Framework Law on Public Works LL.PP. approved by Presidential Decree 05.10.2010, n. 207 and in accordance with Articles 239 and sub sequential articles of Legislative Decree 163/2006.

Contractor's requests and claims must be made and recorded in the accounting documents in accordance with the above-mentioned Regulation, otherwise they cannot be considered as valid.

In any case the contractor cannot slow down or suspend the execution of the works.

Disputes between the Contracting Authority and the contractor both during the works and at the end of the contract, whatever technical, administrative or legal origin they have, without exception, who have not been solved through administrative channels shall be referred to judiciary Ordinary.

### **Art.34 - Compliance of collective agreements – labour**

The contractor has to compliance with all laws, regulations and standards in force (including those that could be issued during the executions of works), and the adoption of special rules listed below

**a)** During the execution of the works included in this contract, the contractor have to fully implement all the provisions contained in the national collective labour agreement and the supplementary local agreements, in force for the time and in the place where the aforementioned works are implemented.

The contractor also has to apply the contract and the same agreement after the due date and until they are replaced and, if cooperative, also in the relations with partners.

These requirements, even if the contractor is not adhering to the policyholders associations or if withdraws from them, and regardless of the industry or craft type, size, structure and the entity of the company itself and regardless of any other legal status, economic model or trade union characteristics of the company, are binding on the contractor.

**b)** As regards safety and hygiene at work, Contracted works must be conducted in full compliance with all applicable regulations on accident prevention and safety at work and in any case in a position of permanent safety and hygiene.

The contractor therefore has to comply and ensure their employees' compliance, as well as any subcontractors and third parties in construction site all the rules mentioned above and also by its discretion, it has taken all measures it deems appropriate to ensure safety and hygiene at work.

**c)** Supervision on the insurance positions of subcontractors:

The Contractor is solely responsible for compliance with the social security and contractual rules

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on behalf of the Contracting Authority also with regard to the workers of the subcontractors, therefore the contractor is responsible of all the necessary supervisions to verify compliance with the law and contractual rules, in particular it shall report to the Insurance and social security institutions, including the Building Fund for its works, the names of the subcontractors at the time of authorization of subcontracting and require to such institutions the certificate of the regularity of the payments at the time of completion of subcontracted works.

Companies are required to daily exhibit at the construction site the list of employees and of subcontractors working in the construction site, together with an indication of the respective authorization and employees.

The fact that subcontracting is not authorized, does not exempt the contractor from liability referred to in the preceding clause but without undermine other rights of the Contracting Authority.

d) Employers are required to comply with the Legislative Decree no. 276/2003 and subsequent amendments, in particular they highlight Articles. 29, 30 and 86 of the same D.Lgs.

e) In case of non-compliance with the obligations envisaged in this article, attested by the Contracting Authority or by the *Direzione Provinciale del Lavoro* (Provincial Labour Office), sect. Labour Inspection, the Contracting Authority will communicate to the contractor, and if necessary, also to the above mentioned Provincial Labour Office, the attested non-compliance. Therefore the Contracting Authority will proceed to the suspension of payments on account, if the work is in progress, or the suspension of payment of the balance, if the work is completed, by investing the amounts thus reserved to guarantee the fulfilment of the above-mentioned obligations.

Payment to the contractor of the amounts will not be made until the Provincial Labour Office, has not attested that the above-mentioned obligations were fully met.

For suspension of payments and deductions mentioned above, the contractor cannot claim exceptions to the Contracting Authority not even/neither by reason of compensation for damages.

Under Article. 5 of the Regulations, in case of delay in payment of wages owed to employees, the contractor is invited in writing by the R.P. (Sole Project Manager responsible for the execution) to do so within the next 15 days. If the contractor fails or not formally contests and giving reasons for the legitimacy of the request within the deadline above-mentioned, during the execution of works, the Contracting Authority may also directly pay the wages to the staff by deducting the amount from the sums due to the contractor for the performance of the contract.

Payments made by the Contracting Authority are attested by receipts prepared by the R.P. and signed by the person in charge.

In the case of formal notification of requests by the contractor, the R.P. provides the forwarding of requests and complaints to the Provincial Office of Labour and maximum employment for necessary inquiries.

### **Art.35 - Termination of the Contract – Enforcement ex officio of works**

The Contracting Authority has the right to terminate the contract if the conditions and the offenses, referred to in Articles. 135 and 136 of Legislative Decree no. 163/2006 as well as those provided for in article 138 of the same Decree, are verified.

If the execution of work delays for the contractor negligence compared to those of the timetable, the D.L. , after a formal notice without effect, D.L. will be entitled to force to execute all the works, or only part of the works, ex officio, by lowest prices or by piecework .

## **CAPO X - INSTRUCTIONS FOR THE COMPLIANCE OF WORKS**

### **Art.36 - Compliance of works and free maintenance**

Until the release of the acceptance certificate or provisional certificate of regular execution, and in any case for a period not less than one year from the date of completion of works, the contractor will be responsible of the free maintenance works performed.

During this period, the contractor, at his own expense, shall maintain, repair, renew, if necessary, the works, the green areas and the facilities. In case of non-fulfilment by the Company of urgent actions within 72 hours, and of the ordinary ones within 15 days as a maximum, there will be an enforcement ex officio.

### **Art.37 - Terms for the acceptance and verification of the implementation rules**

The test certificate is issued within six months from completion of work and is a provisional certificate; it assumes finality within two years from the date of issue. After that date, the acceptance shall be automatically approved even if the formal act of approval is not provided within the following two months. If the test certificate is replaced by the correct execution certificate, the certificate must be issued within three months from the date of completion of works.

During the execution of the work the Contracting Authority may carry out testing operations to verify the full compliance of the current characteristics of the works in progress as required in the contract.

### **Art.38 - Work takeover**

The Contracting Authority has the right to take over part or completely, contracted works even right after the completion of works.

When the Contracting Authority makes use of the faculty of communicating to the Company Contractor by registered letter, the company itself can not oppose it for any reason or cause, nor can it claim any compensation.

The contractor may, however, request that specific records about the state of the works in order to be guaranteed by the possible damage that could be caused to the works themselves.

The takeover of the works by the Contracting Authority will take place within a period to be determined by the same Contracting Authority through the D.L. or through other person delegated for this purpose and in the presence of the contractor's legal representative or two witnesses in the case of his absence.

If, however, the Contracting Authority is not in the position to take over the works after the completion of the work, the contractor cannot claim delivery and is also obliged to free maintenance until the date set out in this Tender Conditions.

## **CAPO XI - FINAL RULES**

### **Art.39 - Charges and other obligations for the contractor – contractor's responsibilities**

Together with charges declared in General Conditions of Tender, in the General Regulations and in the Special Conditions of Tender, as well as with the provisions of all the plans for the physical security measures of workers, charges and obligations that follow shall be responsibilities of the contractor.

**1) The earthworks and all other costs related to training are equipped shipyard, in relation to the**

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magnitude of the work, with all the modern and improved facilities to ensure a perfect and speedy implementation of all pre-works, the yard's fence will be built as required by the Safety Plan, as well as the cleaning and maintenance of the construction site, gravel laying and arrangement of its streets in order to make sure the transit and the movement of vehicles and people involved in all works.

2) The maintenance and preservation of the construction site and of any materials, as well as all things of the Contracting Authority and of green areas that will be delivered to the contractor and those who has been already performed. The maintenance and the preservation are extended also to the period of suspension of work and up to twelve months from the date of execution of the external works.

3) The construction, within the fence of the working site and in locations established by the D.L., and maintenance of the office rooms of the staff of the D.L. and assistance, furnished, lit and heated equipped with a telephone and fax depending on the requirements of the D.L. and those provided in the Safety Plan.

4) The execution, at the Institutes, of all the experiences that will be in each time ordered by the D.L., the materials used or to be used in construction, in conjunction with the provisions on the acceptance of the same materials. Samples can be ordered conservation in relevant management office providing them with seals to the D.L. and Contractor's signature in the most suitable ways to establish its authenticity.

5) The preparation of all those measures and temporary structures that allow, enable and facilitate the D.L. to perform the tasks.

6) Surveillance, both by day and by night, with the necessary staff, the construction site and all the materials in situ, as well as the plantation.

Personnel security guard must have the status of "special security guard" under Article. 22 Law no. 646/1982.

7) The responsibility for shortages and damages of any kind, through acceptance or take over in advance, regarding the works carried out or in progress, materials, facilities and equipment of any kind, even of property of the Administration, existing in construction site.

8) The execution of each load testing that is ordered by the D.L. on bearing piles, slab floors, balconies and any other load bearing structure.

9) The supply and maintenance of the warning signs, night signalling lights within the prescribed points and anything which was particularly recommended by applicable laws for safety.

10) The supply and maintenance of robust and strong signs indicating the name of the Contracting Authority, the object of the contract, the Contractor Company, the object and the name of any subcontractors and / or piecework labour, the name of the responsible for Safety and the his assistant, and anything else will be required by the D.L.

11) Maintaining, until the provisional acceptance, the continuity of drains and water transit on the streets or public or private trails adjacent to the works to be performed.

12), the anticipation of charges, taxes, etc., for necessary and urgent measures in order to go further with works, by administration request.

13) The costs relating to the use of authorized landfills. The compliance with the regulations as regards storage and dumping of toxic and / or polluting materials.

14) The Technical Director has to be documented capable and experienced staff, chosen by D.L. itself, has to be provided at least a diploma, enrolled on the professional Albo or to their stable dependencies, and to be enabled for the role of C.S.E. (Safety and Security Coordinator) (during design and execution - pursuant to Legislative Decree. n. 81 of 9 April 2008).

Any broader responsibility in case of accidents, is therefore a contractor's and Company's

Technical Director liability, while Contracting Authority and the D.L. are fully relieved from liability.

The contractor has to, by the request of the D.L. , to provide the curriculum of the Technical Director of the construction site, before assigning the role.

The task of the Company's Technical Director in Site is generally to assist the D.L., for the duration of the works, ensuring his continuous presence on site, so that the instructions laid down can be implemented. The Technical Director of the Company's Shipyard is required to more in-depth knowledge of all the elements that contribute to the implementation of the project.

In the event that the Contracting Authority award to other companies categories of works, the contractor as Technical Director has to coordinate the various operators and to ensure the overall execution of the work according to the best practice and according to the contractual time schedule for each of the contracts.

In this regard it should be noted that the design and execution of all the works in construction site, which are provisional but necessities to give fulfilled all contracted works, are the sole responsibility of the Company's Technical Director. The latter shall nevertheless take into account the requirements contained in the Safety Plan, and if the implementation affects the provisions thereof, he must inform the Safety Coordinator during the working phase. The Company has to, at the request of the D.L., replace the Technical Director of Construction site, if his failure or default are attested.

**15)** The identification of infrastructure and pipelines, underground and not, to cross or move and related requests to owner, also relating to the provisions of Article. 4 Law no. 1/1978.

**16)** The execution of the necessary tracing operations, the supply of labour and necessary tools for measurements and adjustments; the execution, in accordance with the Decree Law, the reliefs on decorative details.

**17)** Sorting, cleaning and stacking of the materials owned by Administration, which may come from work performed under the contract and unloading and transport to the sites mentioned by the Decree Law, or to the landfill.

**18)** The removal and the immediate replacement of staff, at the discretion of the D.L., for whom serious technical or disciplinary shortcomings are attested.

**19)** Expenses for royalties or patent rights and copyright for the devices used (Law no. 633/1941 and R.D. n. 1127/1939).

**20)** At the request of the D.L., contractor is required to realized models made of appropriate material, even in scale 1:1 , their placement in the site, as well as the execution of all the necessary changes, all at the expenses of contractor, in order to obtain approval before proceeding to execution of works.

**21)** The communication to the Office, from which the work depends, within the terms established by the same office, of all data related to labour.

**22)** The cleaning of the premises under construction and of transit routes of construction site, made by the necessary staff, together with removal of the waste materials left behind by other companies.

**23)** The complete clearing of the construction site within 30 (thirty) days from the completion of the work, including the removal of materials, earth mounds, carry forward related to service roads that were performed for the use of the site, but not forecasted in the project, and however, as necessary, the restoring of the situation existing before, except as needed for the acceptance operations, to be cleared immediately after the test accomplishment.

**24)** Guarantee the free and safe access to the site and the passage, within the site and works

area to the persons involved and any other company to which are entrusted works not included in this contract, and to the people who are carrying out work on direct behalf Contracting Authority, and, at the request of the D.L., the partial or total use, by such companies or persons, of the bridges of services, scaffolding, temporary buildings, and of lifting equipment for the entire time required to carry out the work that the Contracting Authority deemed perform directly or by means of other Companies, from which, such as the Contracting Authority, the contractor may not claim any compensation. Such enterprises will be subject to the same charges with respect to safety requirements for subcontractors.

**25)** Supplying at its own expense and under its full responsibility, receipt on site, unloading and transport to storage sites situated in the interior of the site, or near the works, according to the provisions of the D.L., and the conservation and good custody of the materials and products excluded from this contract and provided or performed by other Companies on behalf of the Contracting Authority.

The damage accidental causes or its negligence made to these materials and products shall be repaired exclusively borne by the contractor.

**26)** The costs, contributions, rights, labour, supplies, all the necessary performance for temporary connections of water, electricity, gas, telephone and sewage necessary for the operation of the construction site and for the execution of the works, as well as the costs of utilities and consumption dependant by the aforementioned utilities. The contractor is obliged to grant, with the reimbursement of expenses, the use of these services to other companies that perform supply or works on behalf of the Contracting Authority;

**27)** the take over before the demobilization of the construction site, a certain amount of material used for flooring, coatings, covers, blinds, etc.. specified by the D.L. with appropriate service order and that will be liquidated with list prices.

**28)** The appropriate protection of marble, natural and artificial stones in both slabs and blocks, reinforced concrete ceilings, flooring, windows and doors frames of any kind, the sanitary equipment, the fittings and accessories, etc. to prevent damage of any nature and cause, as well as the removal of such protection at the request of the D.L. (e.g. for measurements and checks) and their recovery. In the case of suspension of the works, the adoption of all necessary measures to prevent deterioration of any kind and for any reason to the executed works, landslides of materials, etc. are responsibilities of the contractor who has the obligation of compensation for any resulting damage due to the failure or insufficient compliance with this standard.

**29)** Allowing the advance use of the premises which were requested by the D.L., and the contractor has not the right to special compensation for that. It may, however, request that it be drafted about the status of the works, to be guaranteed by the possible damage that may be caused by them.

**30)** The company in charge of installation must issue to the Client the appropriate Evaluation of Conformity which includes all required documents relating to the systems in accordance with article 1 of Law 46 of 03.05.1990 and the related "Implementation Regulations" made in accordance with the rules referred to in articles 7 and 9 of the above-mentioned law, also in accordance with the instructions that will be provided by the Facilities Service of the Contracting Authority.

**31)** The Company is required to comply with the provisions of Presidential Decree 05.10.2010 n. Article 207. 15, paragraph 4: "In order to perform maintenance and possible intervention changes in its useful life, the elaborate of the project are updated as a result of the variants or the implementing solutions that become necessary, by contractor and with the approval of the Director of Works, in order to make available all information on the ways of realization or work".

The sum for all obligations and charges above -specified is declared in list prices that were used for determining the lump sum.

**32)** The Contracting Authority has the right to request to the Company awarded the documentation for metrological traceability and calibration of measuring instruments used.

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#### Art.40 - Taxes - fees - contractual expenses - Complaints

Following expenses are borne by the Contractor, without recourse:

- 1) the fees and other charges for obtaining all the necessary licenses for the technical execution of the works and functionality of the plants, with the exception of the permanent connection fees to the utility of electrical energy companies;
- 2) fees and other expenses due to territorial authorities (temporary occupation of public land, driveways, discharge permits, of landfill fees etc.) directly or indirectly connected to the site management and execution of the works.

All stamp expenses for the acts necessary for the management of work, from delivery to the issue date of the test certificate or certificate of regular execution are also borne by the Contractor.

Paid by the contractor are also taxes and other charges, which directly or indirectly a burden on the contract work and supplies.

This contract is subject to value added tax (VAT); all amounts mentioned in this tender documents are considered VAT excluded.

The tax of € 16,00 stamp for each sheet, provided for in Article. 2 of the Tariff, Part I annexed to Presidential Decree 642/1972, bears from the outset on documents considered by law an integral part of the contract, or on those which involve consequences for the contractual relationships between the parties.

These documents can therefore be identified in the following list:

- the contract documents, containing the terms of the contracts of a particular genre or a single contract;
- general specifications;
- Special specifications;
- unit price list;
- timetable;
- take over record process;
- record of suspension and restart of work;
- certificate of compliance of work;
- determination and approval of new prices not covered in the contract;
- acceptance certificate;
- certificate of regular compliance.

The stamp duty of € 1.00 for each sheet or exemplary art. 28 of the fees, levied in case of use on technical drawings of their professional categories as identified in aforementioned art. 28.

- Such documents may be:
- Design graphics;
- safety plan;
- drawings;
- bill of quantities;
- technical reports;

- 
- ground plans.

The stamp duty of € 16.00 for each of the act or other document in writing, and for every hundred pages or fraction of one hundred pages of the register or the license extract, provided for in Article. 32 of the fee, levied in the event of use with deliverables that do not have the characteristics of the technical documents required for the application of Article. 28 of the fee.

- Above-mentioned documents are generally, those who follow:
- site activities log;
- booklet measures;
- weekly list;
- handbook of accounting procedures;
- accounting ledger;
- stage reached in the works;
- certificate of rates payment;
- final accounting of the works and corresponding report.

It is specified that:

pursuant to art. 2 of Presidential Decree 642/72 you have the use case when the acts, documents and records are submitted to the office of the register for recording;

pursuant to art. 5 of Presidential Decree:

- the sheet means comprises four facades, the page means one facade;
- copy means the total or partial reproduction of the appropriate documents and registers declared conform to the original by the person who issued it;
- for reproductions by mechanical, photographic, chemical and similar sheet means consisting of four pages provided they are joined or fastened together to form a single act containing the last front of the original declaration of conformity.

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